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ENTERED
Office of Proceedings
October 7, 2024
Part of
Public Record

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October 7, 2024

Via E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
U.S. Surface Transportation Board
395 E. Street SW
Washington, DC 20423

Re: SMS Rail Service, Inc.
Petition for Declaratory Order of Township of Pilesgrove, Salem County, NJ; &
Petition for Leave to Intervene of Township of Mannington, Salem County, NJ
STB Finance Docket No. 36770

Dear Ms. Brown:

Enclosed for filing is the Response of SMS Rail Service, Inc. ("SMS") to Pilesgrove Township's and Mannington Township's Proposed Procedural Schedule in the above-referenced declaratory order proceeding.

Thank you again for your consideration of SMS's request.

Respectfully,

/s/ Robert A. Klein
Robert A. Klein

cc: All parties shown on the attached service list

Ms. Cynthia T. Brown
October 7, 2024
Page Two

FD 36770 Service List

By Email:

Ekaterine N. Eleftheriou, Esq.
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Karin M. Wood, Esq.
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BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWNSHIP OF PILESGROVE, N.J.	)	FINANCE DOCKET
PETITION FOR DECLARATORY ORDER	)	NO. 36770

**RESPONSE OF SMS RAIL SERVICE, INC. TO PILESGROVE TOWNSHIP'S AND
MANNINGTON TOWNSHIP'S PROPOSED PROCEDURAL SCHEDULE**

SMS RAIL SERVICE, INC.
513 Sharptown Road
Logan Township, NJ 08085

Respondent

ROBERT A. KLEIN, ESQUIRE
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Attorney for Respondent

DATE FILED: October 7, 2024

To Honorable Board Chairman Primus, and Board Members Fuchs, Schultz, and Hedlund:

On behalf of SMS Rail Service, Inc. (“SMS”), the undersigned counsel for SMS submits this response to the letter submissions of Pilesgrove Township and Mannington Township regarding the procedural schedule for this declaratory order proceeding.

The statement by Pilesgrove that the parties agreed to submit their own proposal because SMS’s counsel suggested a more complex schedule than required is untrue. Rather, both Pilesgrove and Mannington stated on the October 1 conference call that because they did not know what the Board prefers, they will simply let the Board decide the schedule and not propose to SMS or the Board any schedule. Thus, the Townships made no effort to agree and jointly submit a proposed schedule as the Board directed in its September 13, 2024 Decision.

Further, the November 15, 2024 deadline Pilesgrove and Mannington now propose for SMS’s submission falls on a date when SMS’s counsel advised the Township Solicitors, both on the October 1 conference call and in SMS’s October 4 submission to the Board, that he will be unavailable due to his trial/arbitration schedule. And contrary to the Township’s service list, SMS is represented in this matter by the undersigned counsel only, and not by Messrs. Hoerst and Avedissian. Moreover, Mannington Township’s Petition to intervene joins Salem County (“Salem”) as well, yet no provision is made for Salem’s submission. Inasmuch as the positions of SMS and Salem are aligned, time is also necessary for SMS to consider Salem’s position relative to issues raised by the Petitions and various related developments. Notably, Salem is not on the Board’s service list.

While scheduling should not be made complex by the Township Solicitors’ stated inexperience, it is clear from the Townships’ perspectives that there is nothing emergent about this matter. This is because SMS has endeavored to be a good neighbor to the numerous

municipalities through which the 19.4 miles constituting the Salem County Branch is located and has made repeated attempts to accommodate Pilesgrove and Mannington Townships regarding their right to inspect, among other things. For example, one of the accommodations that SMS is forced to undertake is arranging alternative electric sources for its railroad operations due to the blocking by Pilesgrove Township of electrical connections as described in the letter dated October 4, 2024, attached as Exhibit “A”. Unfortunately, this is a recurring theme due to perceived tactical leverage these Townships believe they have over regulation of the railroad. Thus, the details in this matter are complex and require support from all parties with proper evidence as required by applicable federal law, not by a paralegal (in the case of Pilesgrove Township) who is not a municipal employee, or by a single zoning officer (in the case of Mannington) based on an alleged single impromptu visit to one spot along the railroad, i.e., not by “municipal employees” as Mannington Township’s letter incorrectly claims.

As noted in SMS’s October 4, 2024 Response, Pilesgrove’s Petition is not supported by any certifications or verified statements of witnesses, and Mannington’s Petition is supported by a scant page and a half certification of a zoning officer that only refers to the afore-mentioned single impromptu visit (not an inspection) to one spot along the railroad last spring, his efforts to serve orders to cease operations and remove railroad improvements, and issuance of criminal complaints against SMS and Salem. The zoning officer acknowledges his receipt of a letter dated April 10, 2024, containing various conclusory statements of Mannington’s Solicitor, which is not evidence. Mannington’s Petition at pages 8-9 expressly states that it may submit other “evidence or argument” in accordance with the schedule the Board issues, which shows that Mannington wants to hold back evidence until late December. This should not be countenanced as it only serves to delay the development of a full record and an orderly proceeding.

To that end, the time requested by SMS and its proposed deadline of November 29 for opening statements is imperative to presenting the facts and avoiding what most certainly appears as these Townships' desire to heap details of their positions and additional issues (as they indicated they have with the railroad) on SMS and the Board in late December, 35 days after opening statements. That course will only serve to delay the factual record for the Board to consider in making its decision.

For some unknown reason, the Township Solicitors do not want their constituents within their communities to have any opportunity to be heard in these proceedings. This is troublesome, as the Solicitors have insisted to SMS and Salem that public input is a substantial reason why they demand that SMS and Salem submit to public hearings in their municipalities under their zoning and permitting processes.

For these reasons and those in SMS's October 4 submission, SMS respectfully requests that it have until at least November 29, 2024 to submit its opening statement and that the Townships be required to do the same, as follows:

1. Opening statements by all parties by November 29, 2024.
2. Other interested persons' comments by December 30, 2024.
3. Replies by all parties by January 20, 2024.

Respectfully submitted,

/s/ Robert A. Klein

Robert A. Klein, Esquire

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Attorney for Respondent SMS Rail Service, Inc.

DATE FILED: October 7, 2024

EXHIBIT A

Townships of Pilesgrove and Mannington, N.J. - Petitions for Declaratory Orders, STB FD 36770

To kat@thevigilantlawfirm.com Copy

Adalberto.Lopez@atlanticcityelectric.com <adalberto.lopez@atlanticcityelectric.com> •

Ryan.Drebes@exeloncorp.com <ryan.drebes@exeloncorp.com> • jheritage@kriservices.com •

wlh@hornerlaw.net • attorneywood@comcast.net • counsel@salemcountynj.gov

Dear Ms. Eleftheriou,

As promised, please see the attached letter.

Bob Klein
215-880-6913

-
- Ltr to E.N.Eleftheriou 10.4.24.pdf (160 KB)

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Robert A. Klein

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October 4, 2024

Via Email: kat@thevigilantlawfirm.com

Ekaterine N. Eleftheriou, Esquire
Solicitor of Pilesgrove Township
99 North Main Street
Mullica Hill, New Jersey 08062

**Re: SMS Rail Service, Inc.
Townships of Pilesgrove and Mannington, N.J. - Declaratory Order Petitions
STB Finance Docket No. 36770**

Dear Ms. Eleftheriou:

Regarding our discussion during the conference call on Tuesday, October 1, 2024, concerning the provision of electricity for the railroad by Atlantic City Electric, you advised that without permits and my client SMS Rail Service, Inc. ("SMS") going through the permitting process, the local municipality lacks knowledge of the existence of the subject railroad facilities, what they are being used for, and why electricity is required. This is untrue. You also mentioned that the amount of electric being requested is a concern to Pilesgrove Township, for which you are Solicitor; however, that question has never previously been posed to SMS. The electric service connection to the railroad has now been blocked for nearly a year over the local jurisdictional claims.

You, on behalf of Pilesgrove, and Mannington Township's Solicitor, who participated in our call and is copied on this correspondence, both stated that SMS must come before the planning boards and go through the formal permitting and zoning process. The premise of these municipalities' demands is their incorrect assertion that the facilities are used exclusively for intrastate activities and therefore subject to local permitting and zoning requirements.

As promised and you requested, I have reviewed the email correspondence back and forth between SMS, you and Pilesgrove Township Clerk, Melissa Fackler, on this subject dating back to March of this year. I understand that it has been explained to you and the local officials in face-to-face meetings with SMS representatives and in the email correspondence that SMS has sent to you and the Township Clerk, that the electric service is needed for SMS's railroad operations, which contrary to your and Mannington's Solicitor's claims, are not exclusively intrastate.

Electric service is required but has been blocked by you for two pre-fabricated sheds and an engine house (all of the drawings and specifications for which were provided to you). You have been aware, and in fact SMS raised again in its most recent email correspondence to you dated September 5, 2024, that SMS needs electric service for its railroad operations, including for locomotive maintenance and storage. Yet during our conversation, you stated that you are without knowledge of what these structures are used for since no permits were requested. The structures and

their uses are in plain view to confirm, and numerous invitations by SMS to the municipalities to inspect have been made, and still the municipalities have failed to inspect the structures. Your foregoing assertion stands as the reason why, despite all of the communication and disclosure, you have not provided confirmation to Atlantic City Electric that these railroad operations are outside of local jurisdiction so that the electric service connection can be made by SMS's electrician, Krise Services, who SMS also tried to put in contact with you. That confirmation is all that Atlantic City Electric requires from you to allow the electrical connection to be made.

In addition, last spring, you withdrew the issued code violations for various permitting, zoning, and/or construction violations in recognition that SMS's activities are under federal jurisdiction and the municipality cannot require permits. Atlantic City Electric has already erected as many as five electric poles with transmission lines on SMS's property, yet you are blocking completion of the connection to the railroad operations.

My understanding is that you have been provided the names of John Heritage, Commercial Project Manager of Krise Services, and Ryan Drebes, Field Engineer Technician of Atlantic City Electric, and have failed to communicate with either of them in this regard. Rather, despite recognizing last spring that the local municipality cannot require permits, you are now insisting that the local permitting process be followed as prerequisite to issuance of a cut-in card for electric service to SMS's facilities. SMS has explained to you that Atlantic City Electric does not require a cut-in card, but rather only a letter or email from you as Pilesgrove Township Solicitor indicating that the Township is without jurisdiction over the railroad. You are aware that the Township may inspect the work as it is in process and/or once the connection is completed. By email correspondence from SMS to the Pilesgrove Township Clerk, dated April 1, 2024, on which you and the Township's Construction Department were copied, SMS stated should you need additional information to assist with the inspection of the connection, it would of course be provided through its electrical contractor Krise Services. No response to that correspondence was received by SMS.

I have copied on this letter Mr. Heritage of Krise Services and Mr. Drebes of Atlantic City Electric, as well as an additional contact at Atlantic City Electric, its Senior Public Affairs Manager, Mr. Adalberto "Bert" Lopez. I request your immediate reply to all on this correspondence providing confirmation that your client Pilesgrove Township is on notice of SMS's request for such electric service connection, that the municipality is without jurisdiction over the service connection, and that your reply by email is in lieu of a cut-in card.

Sincerely,

/s/ Robert A. Klein
Robert A. Klein

cc (via email):

Mr. Bert Lopez, Sr. Pub. Affairs Mgr, AC Elec. - Adalberto.Lopez@atlanticcityelectric.com

Mr. Ryan Drebes, Field Engineer Technician, AC Electric - Ryan.Drebes@exeloncorp.com

Mr. John Heritage, Commercial Project Manager, Krise Services - jheritage@kriservices.com

William L. Horner, Esq., Mannington Twp. Solicitor - wlh@hornerlaw.net

Karin M. Wood, Esq., Salem Solicitor - attorneywood@comcast.net, counsel@salmecountynj.gov

VERIFICATION

Robert A. Klein, Esquire, counsel for SMS Rail Services, Inc., hereby verifies that the facts set forth in the foregoing Response of SMS Rail Service, Inc. to Pilesgrove Township's and Mannington Township's Proposed Procedural Schedule, are true and correct to the best of his knowledge, information and belief, and further acknowledges and understands that all statements made herein are subject to the penalties relating to unsworn falsification to authorities.

Date: October 7, 2024

/s/ Robert A. Klein
Robert A. Klein, Esq.

CERTIFICATION OF SERVICE

It is hereby certified that on this 7th day of October, 2024, I served a true and correct copy of the foregoing Response of SMS Rail Service, Inc. to Pilesgrove Township's and Mannington Township's Proposed Procedural Schedule in the manner indicated below upon the following counsel for the parties:

By Email:

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Date: October 7, 2024

/s/ Robert A. Klein
Robert A. Klein, Esq.